LIM SUE BENG v. RHB BANK BHD & ORS

COURT OF APPEAL, PUTRAJAYA
LIM YEE LAN JCA
IDRUS HARUN JCA
ASMABI MOHAMAD JCA
[CIVIL APPEAL NO: W-03(IM)-46-04-2016]
29 OCTOBER 2017

BANKRUPTCY: *Notice – Amendment – Application to amend bankruptcy notice – Judgment creditors commenced bankruptcy proceedings against judgment debtors based on single judgment obtained – Collective exercise of enforcement of judgment – Application by one of judgment creditors for leave to cease to be judgment creditor – Whether bankruptcy notice must be withdrawn to give effect to settlement agreement – Whether fresh proceedings must be commenced – Whether O. 20 r. 8 of Rules of Court 2012 applicable – Bankruptcy Act 1967, ss. 93(3) & 95 – Bankruptcy Rules 1969, r. 276*

The respondents, the judicial creditors ('the JCs') in the present appeal, commenced an action against Gula Perak Berhad ('GPB') for the recovery of RM28,170,931.83 under a syndicated loan granted by the former to the latter ('the suit'). The appellant, the judgment debtor ('the JD'), was the guarantor to the syndicated loan. The JCs successfully obtained judgment against GBP and the JD ('the judgment'). The judgment had (i) specified amounts to be paid to each of the respective JCs; and (ii) to be approached as collective exercise of the JCs when it came to enforcement. The JCs commenced bankruptcy proceedings against the JD, based on a single judgment obtained against the defendants. One of the JCs, RHB Bank Berhad ('RHB Bank') applied for leave for RHB Bank to cease to be a JC and to amend the bankruptcy notice ('BN') and the creditors' petition ('CP') that the JD had settled the sum of RM19,058,325.15 to RHB Bank ('encl. 46'). The JD argued that (i) encl. 46 was misconceived and the court had no jurisdiction to grant the amendment; (ii) the judgment was based on one single judgment in favour of all the JCs thus a single BN and CP were filed; and (iii) the BN should be withdrawn and a fresh bankruptcy proceedings be commenced. The High Court Judge ('the HCJ') allowed encl. 46 and RHB Bank ceased to be a party to the bankruptcy proceedings and the BN and CP were amended. The HCJ held that, *inter alia*, s. 93(3) of the Bankruptcy Act 1967 ('the BA') read with r. 267 of the Bankruptcy Rules 1969 ('the BR') meant that O. 20 r. 8 of the Rules of Court 2012 ('the ROC') was applicable where the provisions on amendment and parties were silent in the BA and the BR. Hence, the present appeal. The JD submitted that the HCJ erred in law and in fact by failing to hold that (i) the BN must be withdrawn to give effect to the settlement agreement; (ii) the BN and the CP were based on a single

judgment therefore, the BN must be withdrawn and a fresh proceeding must be commenced; (iii) s. 95 of the BA requires the substitution of petitioner and not by amendment to the BN; and (iv) r. 276 of the BR did not apply.

Held (allowing appeal; setting aside decision of High Court)
Per Asmabi Mohamad JCA delivering the judgment of the court:

(1) The JCs elected to proceed collectively on the strength of a single judgment. The election was central to the character of the BN and CP. Therefore, the JCs were not permitted to change the character of the BN and CP. There is no express provision in the BA or the BR to allow for this situation. The HCJ had no jurisdiction to order for the cessation of RHB Bank from the bankruptcy proceedings and the consequential amendments to the BN and CP in the manner that was done in this case. The JCs ought to have withdrawn the BN and CP and filed afresh. (para 20)

(2) Section 95 of the BA was a provision which allows for substitution in specific circumstances, *ie*, to allow a petitioner and/or to provide for the Director of Insolvency the carriage of the proceedings in cases where the petitioner does not proceed with the bankruptcy proceedings with due diligence. The case before the HCJ was not a case where the petitioner did not proceed with the bankruptcy proceedings with due diligence but a co-petitioner who had received his portion of the judgment sum, wished to cease from being a party to the bankruptcy proceedings. The HCJ erred in treating the application as an application to correct a misnomer and/or a formal defect in the BN and CP when the case was concerned with substantive change to the character of the BN upon which the CP was issued. (paras 22 & 23)

(3) There is no express provision in the relevant laws for RHB Bank to withdraw as a party to the bankruptcy proceedings when there were multiple JCs. The decision of the HCJ to allow for RHB Bank to do so was erroneous. The HCJ ought not to have implied the power by lifting the provision of the ROC. Her Ladyship ought not import words into the BA or the BR. The reference to the ROC and r. 276 of the BR was misplaced. The provisions of the ROC and the BR were not applicable to the facts of this case. (paras 28 & 31)

Bahasa Malaysia *Headnotes*

Responden-responden, pemiutang penghakiman ('JC') dalam rayuan ini, memulakan tindakan terhadap Gula Perak Berhad ('GBP') untuk mendapatkan semula RM28,170,931.83 bawah satu gugusan pinjaman yang diberi oleh mereka kepada GBP. Perayu, penghutang penghakiman ('JD') adalah salah seorang penjamin gugusan pinjaman ini. JC berjaya mendapatkan penghakiman terhadap GBP dan JD ('penghakiman'). Penghakiman telah (i) memperuntukkan jumlah yang perlu dibayar kepada

setiap JC; dan (ii) hendaklah dianggap sebagai langkah kolektif JC dalam pelaksanaannya. Judgment Creditor memulakan prosiding kebankrapan terhadap JD berdasarkan penghakiman tunggal terhadap defendan-defendan. Salah satu JC, RHB Bank Berhad ('RHB Bank'), memohon kebenaran agar RHB Bank dihentikan daripada menjadi JC dan agar notis kebankrapan ('NK') dan petisyen pemiutang ('PP') dipinda dengan menyatakan JD telah membayar sejumlah RM19,058,325.15 kepada RHB Bank ('lampiran 46'). JD menghujahkan bahawa (i) lampiran 46 adalah satu salah tanggapan dan mahkamah tiada bidang kuasa membenarkan pindaan tersebut; (ii) penghakiman berdasarkan satu penghakiman tunggal berpihak pada kesemua JC maka satu NK dan PP difailkan; dan (iii) NK sepatutnya ditarik balik dan satu prosiding kebankrapan sepatutnya dimulakan. Hakim Mahkamah Tinggi ('HMT') membenarkan lampiran 46 dan RHB Bank terhenti daripada menjadi pihak dalam prosiding kebankrapan dan NK dan PP dipinda. Hakim Mahkamah Tinggi memutuskan bahawa, antara lain, s. 93(3) Akta Kebankrapan 1967 ('AK') dibaca bersekali dengan k. 267 Kaedah-Kaedah Kebankrapan 1969 ('KKK') bermaksud A. 20 k. 8 Kaedah-Kaedah Mahkamah 2012 ('KKM') terpakai apabila peruntukan-peruntukan tentang pindaan dan pihak-pihak tidak dinyatakan dalam AK dan KKK. Maka timbul rayuan ini. JD menghujahkan bahawa HMT terkhilaf menurut undang-undang dan fakta kerana tidak memutuskan bahawa (i) NK mestilah ditarik balik untuk menguatkuasakan perjanjian penyelesaian; (ii) NK dan PP adalah berdasarkan penghakiman tunggal dan dengan itu, NK mesti ditarik balik dan prosiding baharu mesti dimulakan; (iii) s. 95 AK mengkehendaki penggantian pempetisyen dan bukan melalui pindaan NK; dan (iv) r. 276 KKK tidak terpakai.

Diputuskan (membenarkan rayuan; mengetepikan keputusan Mahkamah Tinggi)

Oleh Asmabi Mohamad HMR menyampaikan penghakiman mahkamah:

(1) JC memilih untuk meneruskan secara kolektif berdasarkan kekukuhan satu penghakiman tunggal. Pemilihan ini membentuk asas sifat NK dan PP. Oleh itu, JD tidak dibenarkan menukar sifat NK dan PP. Tiada peruntukan nyata dalam AK mahupun KKK yang membenarkan situasi ini. Hakim Mahkamah Tinggi tiada bidang kuasa memerintahkan pemberhentian RHB Bank daripada prosiding kebankrapan dan pindaan susulan pada NK dan PP melalui cara seperti dalam kes ini. JC sepatutnya menarik balik NK dan PP dan memulakan fail baharu.

(2) Seksyen 95 AK adalah peruntukan yang membenarkan penggantian dalam hal keadaan khusus, contohnya, membenarkan pempetisyen dan/atau memperuntukkan buat Ketua Pengarah Insolvensi penjalanan prosiding kes-kes yang pempetisyen tidak memulakan prosiding kebankrapan dengan usaha wajar. Kes yang timbul di hadapan HMT bukan kes yang pempetisyen tidak memulakan prosiding kebankrapan

dengan usaha wajar tetapi pempetisyen bersama yang telah menerima bahagiannya dalam jumlah penghakiman, berhajat ingin berhenti menjadi pihak dalam prosiding kebankrapan. Hakim Mahkamah Tinggi terkhilaf dalam menganggap permohonan ini permohonan membetulkan ketidakpadanan dan/atau kecacatan rasmi dalam NK dan PP sedangkan kes ini tentang pertukaran besar sifat NK yang daripadanya PP dikeluarkan.

(3) Tiada peruntukan nyata dalam undang-undang relevan untuk RHB Bank menarik diri sebagai pihak dalam prosiding kebankrapan sedangkan terdapat beberapa JC. Keputusan HMT membenarkan RHB Bank berbuat demikian adalah satu kekhilafan. Hakim Mahkamah Tinggi tidak sepatutnya menyiratkan kuasa dengan menyingkap peruntukan KKM. Beliau tidak sepatutnya mencedok masuk perkataan-perkataan ke dalam AK atau KKK. Rujukan pada KKM dan k. 276 KKK tersasar. Peruntukan-peruntukan KKM dan KKK tidak terpakai pada fakta kes ini.

Case(s) referred to:

Dr Shamsul Bahar Abdul Kadir & Another Appeal v. RHB Bank Bhd [2015] 4 CLJ 561 FC ***(refd)***

Hong Leong Bank Bhd v. Khairulnizam Jamaluddin [2016] 7 CLJ 335 FC ***(refd)***

Malayan Building Society Bhd v. Tan Sri General Ungku Nazaruddin Ungku Mohamed [1998] 2 CLJ 340 CA ***(refd)***

Re Kasiah Kasbah, ex p Sime Bank Bhd [2003] 5 CLJ 468 HC ***(dist)***

Re North ex parte Hasluck [1895] 2 QB 264 ***(refd)***

Re Subramaniam Paidathally; ex parte G Ragumaren & Co [2011] 1 LNS 1594 HC ***(refd)***

Legislation referred to:

Bankruptcy Act 1967, ss. 6(7), 93(3), 95
Bankruptcy Rules 1969, rr. 267, 276
Rules of Court 2012, O. 15 r. 6, O. 20 r. 8

Other source(s) referred to:

Halsbury Laws of England, 4th edn Reissue, paras 173 & 174

For the appellant - Malik Imtiaz Sarwar, Tony Woon & Chan Wei June; M/s Woon & Co

For the respondent - Lua Ai Siew & Elyazura Md Shaarani; M/s Soo Thien Ming & Nashrah

[Editor's note: For the High Court judgment, please see Re Lim Sue Beng; Ex-parte: RHB Bank Berhad & Ors [2016] 1 LNS 741 (overruled).]

Reported by Najib Tamby

JUDGMENT

Asmabi Mohamad JCA:

Introduction

[1] This is an appeal from the Kuala Lumpur High Court (Commercial Division) against the decision of the learned judge of the said High Court dated 28 March 2016 which allowed the respondent's application for leave to be granted to one of the judgment creditors, RHB Berhad ("RHB Bank") to cease to be a party to the bankruptcy proceedings and that further leave be granted to amend the bankruptcy notice ("BN") dated 24 February 2011 and the creditors petition ("CP") dated 25 November 2011 accordingly (encl. 46).

[2] After having perused the appeal records, the written submissions of the respective parties as well as hearing the oral arguments on the issues raised, we allowed the appeal with costs of RM10,000 subject to payment of allocator fees. The order of the High Court was set aside. The deposit to be refunded to the appellant.

[3] Our reasons for doing so now follow.

[4] For ease of reference the parties will be referred to as they were described in the High Court.

Brief Background Facts

[5] The eight JCs including RHB Bank commenced an action against Gula Perak Berhad ("Gula Perak"), the first defendant for the recovery of the sum RM28,170,931.83 under a syndicated loan granted by the JCs to Gula Perak ("Civil Action No. D5-22-1648-2005 ("the suit")). RHB bank's portion of the syndicated loan was RM9,268,336.25. Lim Sue Beng, was the second defendant in the suit who stood as a guarantor to the syndicated loan granted to Gula Perak ("JD").

[6] On 29 October 2014, after a full-blown trial, all the eight JCs obtained judgment against Gula Perak and the JD (see supplementary appeal record at pp. 80-83).

[7] The salient features of the judgment were:

(a) The judgment had specified for certain amounts to be paid to each of the respective JCs, including RHB Bank and combined the entitlements of each of the JCs.

(b) The judgment had to be read as a whole. Each of the JCs would have to refer to the judgment to establish its interests under the judgment.

(c) The enforcement of the judgment had therefore to be approached as collective exercise on the part of the JCs, their interest being inter-connected by reason of the nature of the claim and the terms of the judgment.

[8] On 24 February 2011, the judgment creditors ("JCs") which included RHB Bank, commenced bankruptcy proceedings against the JD. The bankruptcy proceedings were based on a single judgment dated 29 October 2010 obtained against the defendants.

[9] *Vide* a letter dated 15 December 2015, RHB Bank informed the JCs' solicitors that the JD had paid the debt due to RHB Bank.

[10] On 16 December 2015 *vide* encl. 46, the JCs applied for leave for RHB Bank to cease to be a JC and to amend the BN and the CP dated 24 February 2011 and 25 February 2015 respectively on the grounds that the JD had settled the sum of RM19,058,325.15 to RHB Bank.

[11] The JD did not file any affidavit in reply in response to the affidavit filed in support of encl. 46.

[12] Counsel for the JD argued, encl. 46 filed by the JCs was misconceived and the court has no jurisdiction to grant the amendment. The JD contended that the judgment was based on one single judgment in favour of all the eight JCs. Thus a single BN and CP were filed. In such a situation, the JD contended that the BN should be withdrawn and a fresh bankruptcy proceedings be commenced.

[13] Aggrieved by the said decision, the JD appealed to this court against the whole of the said decision.

Findings Of The Learned Judge

[14] Amongst others, the learned judge made the following findings:

(a) Since encl. 46 is not for the substitution of a JC or a change of carriage of petition, the issue of s. 95 of the Bankruptcy Act (Act 360) ("BA 1967") and paras. 173 and 174 of *Halsbury Laws of England*, are not relevant. In cases involving substitution and change of carriage, they are only relevant where the JC does not proceed with due diligence or has no intention to prosecute the petition, and other JC want to continue with the proceedings. In this case there is no issue of intention for the other seven JCs wanting to continue with the petition.

(b) Section 93(3) of the BA 1967, read with r. 267 of the Bankruptcy Rules 1969 ("1969 BR") meant that the Rules of Court 2012 ("ROC") is applicable where the provisions on amendment and parties are silent in the BA 1967 and the 1969 BR. Thus O. 15 r. 6 and O. 20 r. 8 of the ROC are applicable.

(c) The application for leave for RHB Bank to cease to be a party in these proceedings should be allowed as the sum payable by the JD to RHB Bank has been settled.

(d) In view of RHB Bank ceasing to be one of the JCs, then the amount owing must necessarily be reduced to reflect the true sum owing under the BN and CP. The reduced sum, which is still above the statutory minimum limit can still form the basis of the BN and CP. Therefore, the CP is still good in law and the jurisdiction of the court is not ousted.

JD'S Grounds Of Appeal

[15] *Vide* his memorandum of appeal, the JD had mounted his attack on the decision of the learned judge on the following grounds:

(a) The learned High Court Judge erred in law and in fact by deciding that RHB Bank had only agreed to withdraw as a party to the bankruptcy petition.

(b) The learned High Court Judge erred in law and in fact when she failed to hold that the BN must be withdrawn to give effect to the settlement agreement.

(c) The learned High Court Judge erred in law and in fact when she failed to hold that the BN and CP are based on a single judgment, the BN must be withdrawn and a fresh proceeding to be commenced.

(d) The learned High Court Judge erred in law and in fact when she failed to hold that s. 95 of the BA 1967 requires the substitution of petitioner and not by amendment to the BN.

(e) The learned High Court Judge erred in law and in fact when she failed to hold that r. 276 of the 1969 BR does not apply as s. 95 of the BA 1967 provides for substitution of a petitioner and further that the BN may be withdrawn with liberty to file afresh.

Our Decision

The Law

[16] Before we deal with the issues at hand and for ease of our discussion of the issues before us, we propose to set out the relevant provisions of the BA 1967 and 1969 BR as follows:

(a) Section 6(7) of BA 1967 provides that a creditor's petition shall not be withdrawn after the same having been presented unless with leave of the court. Section 6 thereof states as follows:

> 6. Proceedings and order on creditor's petition.
>
> (7) A creditor's petition shall not after presentation be withdrawn without the leave of the court.

(b) Section 93(3) gives the discretionary powers to the court to deal with incidental matters concerning the bankruptcy proceeding, amongst others, adjournment of proceedings, amendment of written process,

A extension of time, taking of evidence either by *viva voce*, interrogatories or upon affidavit. For the purpose of the case at hand only sub-s. 93(3) is relevant which reads:

> Discretionary powers of the court.
>
> B (3) The court may at any time amend any written process or proceeding upon such terms, if any, as it thinks fit to impose.

(c) Section 95 provides for change of carriage of proceedings and/or substitution of petitioner in instances where the petitioner does not proceed on his petition with due diligence. Section 95 states as follows:

C 95. Power to change carriage of proceedings.

> Where the petitioner does not proceed with due diligence on his petition, the court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of the petitioning creditor, or may give carriage of the
> D proceedings to the [Director General of Insolvency], and thereafter the proceedings shall, unless the court otherwise orders, be continued as though no change had been made in the conduct of the proceedings.

(d) Rule 276 of 1969 BR provides for the application of the provisions of
E ROC in bankruptcy proceedings in event of lacuna in the BA 1967 and/or 1969 BR. The specific provisions are as follows:

> In the absence of any rule regulating any proceeding under the Act or these Rules, the Rules of the High Court shall apply *mutatis mutandis*.

F **[17]** *Vide* encl. 46 (at p. 33 of the AR), the JCs sought leave from the court for RHB Bank, one of the co-petitioners in the CP who had initially elected to proceed collectively pursuant to a single judgment against the JD to cease to be a party to the bankruptcy proceedings commenced against the JD. In addition to the prayer for the cessation of RHB Bank as a party to the
G proceedings, the JCs had also sought leave for certain consequential amendments to be made to the BN dated 24 February 2011 and the CP dated 25 February 2011 respectively (see pp. 34 to 37 of the AR) to reflect the change (see pp. 30-46 of AR).

[18] These amendments would have the effect to change the BN which
H form the basis and/or substance of the CP being issued as if RHB Bank was never a party to the bankruptcy proceedings from the outset. If such amendments are not made the CP would not be able to proceed as proposed. The amendments reflect the change in the BN as well as the CP.

I **[19]** According to the JCs, this application was made pursuant to s. 93 of the BA 1967, O. 15 r. 6, O. 20 r. 8 of the ROC and r. 276 of the 1969 Rules.

[20] Enclosure 46 was opposed by the JD primarily on the ground that it was an abuse of the process for being misconceived as the BN and the CP were based on a single judgment. The JCs in this case had elected to proceed collectively on the strength of a single judgment, therefore, the election is central to the character of the BN and CP. Hence the JCs are not permitted to change the character of the BN and CP in the manner it was done in this case. According to the JD there is no express provision in the BA 1967 or 1969 BR to allow for this situation. In view of the above the learned judge has no jurisdiction to order for the cessation of RHB Bank from the bankruptcy proceedings and the consequential amendments to the BN and CP in the manner that was done in this case. The JCs ought to have withdrawn the BN and CP and file afresh.

[21] Learned counsel for the JD further argued s. 6(7) of the BA 1967, makes provisions for the withdrawal of a petitioner after the presentation of the creditor's petition without leave of the court. However, there are no specific provisions in the BA 1967 which allow for a JC to withdraw as a party to the bankruptcy proceedings when there are multiple creditors.

[22] Section 95 of the BA 1967 is a provision which allows for substitution in specific circumstances, for example, to allow a petitioner and/or to provide for the director of insolvency the carriage of the proceedings in cases where the petitioner does not proceed with the bankruptcy proceedings with due diligence. The case before the learned judge was not a case where the petitioner does not proceed with the bankruptcy proceedings with due diligence but a co-petitioner who had received his portion of the judgment sum, wished to cease from being a party to the bankruptcy proceedings.

[23] We were of the view that the learned judge erred in treating the application before Her Ladyship as an application to correct a misnomer and/or a formal defect in the BN and CP when the case was concerned with substantive change to the character of the BN upon which the CP was issued. Hence, the learned judge's reliance on the principles enunciated in the *Re Kasiah Kasbah, ex p Sime Bank Bhd* [2003] 5 CLJ 468 was misplaced as in *Re Kasiah Kasbah (supra)* it was an application to correct the spelling in the name of the judgment debtor from Kasiah to Kasbah bt Kasban. This according to the court was merely a formal defect.

[24] We have anxiously perused the relevant provision of the BA 1967 and the 1969 BR. We are satisfied that there are no express provisions in the above-mentioned laws which allow for RHB Bank, a co-petitioner in the BN and CP to withdraw from being a party to the bankruptcy proceedings when there are multiple judgment creditors. In this case RHB Bank had elected to proceed collectively and this election was central to the character of the BN and the CP.

[25] Unlike the U.K position, where substitution and change of carriage are permitted in additional circumstances, amongst others, in the event of disentitlement of the petitioner to do so, or where the petitioner consents to withdraw or allow the petition to be dismissed or non-appearance of the petitioner on the date of the hearing (see paras. 173 & 174 of *Halsbury Laws of England*, 4th edn Reissue).

[26] Under s. 95 of the BA 1967 the bankruptcy court is only empowered to substitute a judgment creditor in a situation where the judgment creditor does not prosecute his petition with due diligence and in no other circumstances.

[27] The issue is whether the learned judge is empowered under the BA 1967, the 1969 BR and/or the ROC to grant order in terms with respect to encl. 46 when there is no express provision under the BA 1967 and the 1969 Rules for the learned judge to rule in the manner it was done in this case.

[28] We were of the view as there is no express provision in the relevant laws as discussed above for RHB Bank to withdraw as a party to the bankruptcy proceedings when there are multiple judgment creditors, the decision of the learned judge to allow for RHB Bank to do so is erroneous. The learned judge ought not to have implied the power by lifting the provision of the ROC. The learned judge ought not import words into the BA 1967 or 1969 Rules.

[29] In support of this we would like to refer to the case of *Hong Leong Bank Bhd v. Khairulnizam Jamaluddin* [2016] 7 CLJ 335; [2016] MLJU 262 which was referred to us by learned counsel for the JD, where the Federal Court through the judgment of Hasan bin Lah (FCJ) held as follows:

> [28] With respect, we are unable to agree with the decision of the courts below. If the legislature has so intended one would expect it to have spelt out that requirement in an express and clear provision to that effect. Such as important requirement cannot, in our view, be inferred from the words used in section 5(3) of the Act. We are at liberty to brush aside the explicit provisions of section 5(3) of the Act and rule 92 of the Rules 1969. There is nothing to say that leave must be first obtained by the creditor before a bankruptcy notice is applied.
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> [29] In interpreting the provisions of a statute, one of the cardinal rules is to adhere as closely as possible to the literal meaning of the words by the Legislature and to give effect to the words used by it. Where the language used is clear and unambiguous, it is not the function of the court to re-write the statute in a way it considers reasonable. In *Chin Chov & Ors v. Collector of Stamp Duties* [1979] 1 MLJ 69 at 70, the Federal Court said:
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> > It may be apposite at this stage to recall certain basic principles in the interpretation of statutes. Applying the words and phrases of a statute in their ordinary meaning has been said to be the first

most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rules of grammar.

It is desirable in all cases to adhere to the words of an act of Parliament, giving to them that sense which is their natural import in the order in which they are placed, per Bayley J. in Ramsgate (Inhabitants).

[30] In *Andrew Lee Siew Ling v. United Overseas Bank (Malaysia) Bhd* [2013] 1 MLJ 449 the Federal Court had this to say at pp. 457-458:

Section 17A of the Interpretation Act provides that:

A construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote the purpose or object.

On the proper application of the provision of the said s. 17A of the Interpretation Act we would refer to the case of *All Malayan Staff Union v. Rajasegaran & Ors* [2006] 6 MLJ 97 wherein the court laid down the principles, *inter alia*, as follows:

In summarising the principles governing the application of the purposive approach to interpretation, *Craies on Legislation* (8th Edition says at p. 566:

(1) Legislation is always to be understood first in accordance with its plain meaning;

(2) Where the plain meaning is in doubt the court will start the process of construction by attempting to discover from the provisions enacted, the broad purpose of the legislation;

(3) Where a particular reading advance the purpose identified, and would do no violence to the plain meaning of the provisions enacted, the courts will be prepared to adopt the reading;

(4) Where a particular reading would advance the purpose identified but would strain the plain meaning of the provisions enacted, the result will depend on the context and, in particular, on the balance of clarity of the purpose identified and the degree of strain on the language.

(also see Court of Appeal case of *Malayan Building Society Bhd v. Tan Sri General Ungku Nazaruddin Ungku Mohamed* [1998] 2 CLJ 340 referred to in *Hong Leong Bank Berhad (supra)*).

[30] In *Re Subramaniam Paidathally; ex parte G Ragumaren & Co* [2011] 1 LNS 1594; [2011] MLJU 1216 the court held that if there is doubt in the interpretation of a statute, especially the BA 1967, given the penal nature of the BA 1967, the doubt should be resolved in favour of the debtor. In *Re North ex parte Hasluck* [1895] 2 QB 264 at pp. 270 and 271, the court held:

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> The Bankruptcy law is the law of public social policy, and affects in a very detrimental manner the status of those who are brought under its operation; in old times, indeed, to make a man bankrupt was to make him criminal; therefore, in Bankruptcy Act such a provision as the one in question ought to be construed as much for the debtor's benefit as possible.

B

[31] The reference to the ROC and r. 276 of the 1969 BR by the learned judge was misplaced. The BA 1967 and 1969 BR do not provide for a withdrawal of the petition in the manner it was done unless an application is made under s. 6(7) of the BA 1967, which is not the case here, the learned judge's reliance on the ROC and 1969 BR was a clear misdirection of law. Clearly, the provisions of ROC and r. 276 of 1969 BN are not applicable to the factual matrix of this case as there is an express specific provision in BA 1967 pertaining to withdrawal of CP. The learned judge ought not to have imported other laws to assist her in resolving the real issues before her and/or implied into the law certain matter not intended by the said law.

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D

[32] In *Dr Shamsul Bahar Abdul Kadir & Another Appeal v. RHB Bank Bhd* [2015] 4 CLJ 561; [2015] 4 MLJ the Federal Court held that the said court would not be in a position to ignore the explicit provisions of an Act of Parliament against a provision of a subsidiary legislation. In event of conflict between these provisions then the provisions in an Act of Parliament should prevail. Likewise, since the provisions with respect to withdrawal are stated in s. 6(7) of the BA 1967 and the provisions with respect to substitution are provided under s. 95 of BA 1967, it is not opened to the learned judge to fall to ROC by invoking s. 93(3) of BA 1967 on amendment and the general provision under r. 276 of the 1969 BR. Order 15 of ROC too would not be applicable in view of the express provision with respect to withdrawal of CP. In this case there is no lacuna in the law for the learned judge to invoke r. 276 of the 1969 BR.

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[33] Learned counsel for the JD had delved with the issues extensively in his submission and we fully agree with the arguments put forth by learned counsel and the same are adopted herein.

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[34] In view of the foregoing, there was a clear misdirection of the law on the part of the learned judge in resolving the issues before her in the manner it was done. The learned judge had fallen into error in misconstruing the provisions of BA 1967, 1969 BR and the provisions of ROC as discussed above. Hence, the decision of the learned judge to allow RHB Bank to withdraw from the petition when there is no provision in the law to cater for such a situation ought to be set aside by this court.

H

I

Conclusion

[35] Having examined the appeal record and perused the written submission and heard the oral arguments, we were constrained to hold that the learned judge failed to judicially appreciate the law presented before her so as to render her decision plainly wrong and upon curial scrutiny merits our appellate intervention.

[36] Based on the aforesaid, we unanimously allowed this appeal with costs fixed at RM10,000 subject to payment of allocator fees. The decision of the High Court was set aside. The deposit is to be refunded to the JD.

[37] We therefore ordered accordingly.